

BOARD/COMMISSION MEMBER TRAINING



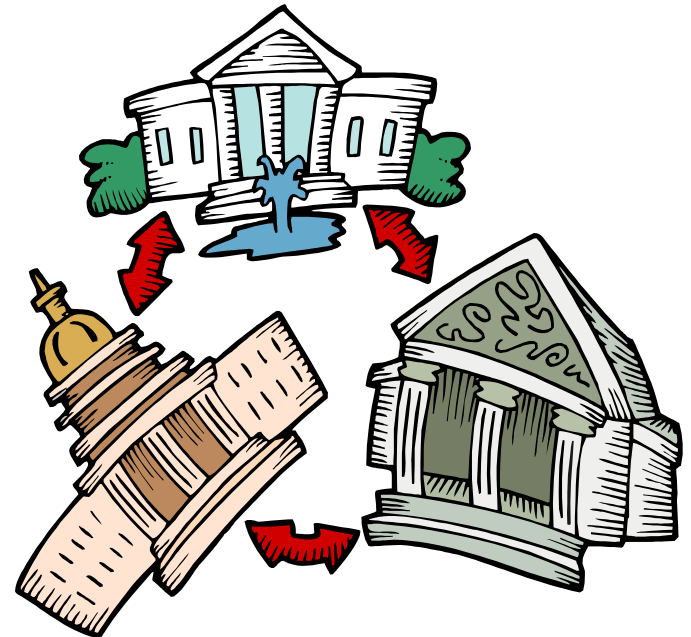
EXAMINERS OF PUBLIC ACCOUNTS



RONALD L. JONES
CHIEF EXAMINER

Government In General

- Separation of Powers and Duties
- Executive Branch
- Judicial Branch
- Legislative Branch



WHO WE WORK FOR

We work for the Legislature.

We are required by law to report to the Legislature and to assist the Legislature.

WHAT WE DO

AUDITS

- **State-Required Audits of:**
 - County Governments
 - County School Boards
 - Colleges and Universities
 - State Agencies Individually
 - State's Financial Statements

WHAT WE DO

- **Federally-Required Audits** of Federal Funds Recipients:
 - The State and Its Agencies
 - County Entities
 - Educational Institutions

ASSISTANCE

- Legislative Committees
- Individual Legislative Members

STAFF

All Merit System

- Examiners
- Support Personnel

Note: Legal Counsel is
provided through the
Attorney General's Office

STAFF

QUALIFICATIONS

Since 1972, all examiners have been required to have an accounting background and a bachelor's degree. Some hold advanced degrees. Approximately 40% are CPAs and approximately 10% hold other professional certifications.

Today's Speakers

- John Segrest
 - Examiner since 1986
- Robin Stone
 - Examiner since 1985
- Christine Parish
 - Examiner since 1999
- Leah Veach
 - Examiner since 2004

POWERS

- Can subpoena records and persons
- Can audit all public funds
- Can recover funds
- Can prescribe accounting systems

Compliance Audits

- Meetings
- Administrative Rules
- Enabling Statutes
- Equipment/Fixed Assets
- Receipts and Revenues
- Personnel
- Disbursements
- SMART Budgeting

Sunset Reviews

- Committee Composition and Selection
- Scope of Committee Operations
- Frequency of Review
- Timing of Reviews of State Agencies

Sunset Reviews

- Committee Procedures Generally
- Legislative Actions on Sunset Bills
- Cessation of Operations by Terminated Agencies

OVERVIEW

- Laws, Rules, and Regulations
- Licensing Issues
- Management Issues
- Financial Issues
- Property Issues
- Personnel/Employment Issues

Purpose of Training

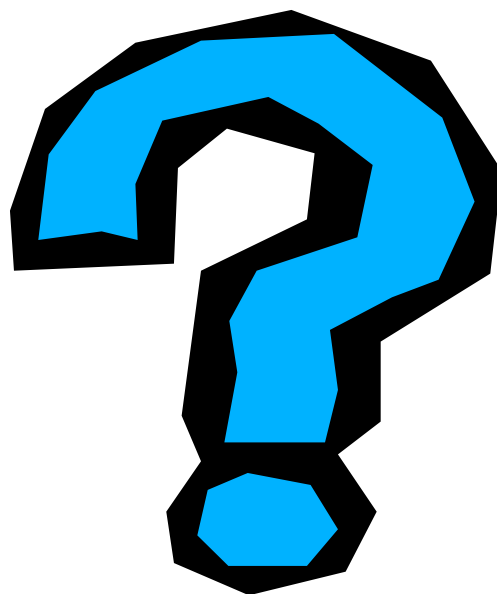
Sunset Committee Request

- Fewer Audit Findings or Significant Items
- Fewer Charges Against Employees and Officials
- Better State Government

Resource Manual

- Electronic Version with your training package**
- Electronic Version on our Internet Website
Under the Forms & Publications Tab**
- Electronic version can be downloaded and
printed or used in electronic form**
- Electronic version can be searched
electronically**

QUESTIONS



Regarding Questions . . .

- ☑ There is no such thing as a stupid question.
- ☑ It's easier to answer a stupid question than to fix a stupid mistake.

You and the LAW

State Regulatory Agencies Cannot
Legally Exist Without Specific Statutory
Authority!!!

You can only impose those requirements
the law says you can.

Levels of LAW

- FEDERAL
 - US Constitution
 - US Code
- STATE
 - ***Constitution of Alabama 1901***
 - ***Code of Alabama 1975***

Code of Alabama 1975

- Why is it important ???
 - Contains regulatory agency's enabling statutes
 - General statutes that enable:
 - Compensation
 - Travel expenses
 - Personnel
 - Rule making
 - Due process
 - Ethics
 - Ability to collect and spend money in the name of the State

Rules and Regulations

- Federal
 - Code of Federal Regulations
- State
 - Alabama Administrative Code

Agency Specific Rules and Regulations

- Statutory permission to make rules and regulations
- Rules and regulations that affect the public
- Legislative Reference Service
Administrative Procedure Division
- Alabama Administrative Code

Rules/Regulations and Change

- Licensee's right/need to be aware
- The public's right to be aware
- Due process

CAUTION!!!!

- Rules cannot be used to expand law!!!
- Rules cannot be used to create requirements that exceed the law.
- Rules cannot be used to create limitations where none are provided by law.

Other Rules and Regulations

- State Auditor's Office
 - Property Inventory Control Division
- Personnel Department Rules and Regulations
- Finance Department Rules and Regulations

NOTICE!!

Personnel Department and Finance Department rules and regulations only apply to agencies operating from the State Treasury. However, these rules and regulations may have portions based on laws that do apply to agencies operating from checking accounts.

Other Guidance

Opinions are agency-specific and are sometimes individual-specific.

- Attorney General
 - Restrictions on who can request an opinion
- Ethics Commission
- Examiners of Public Accounts
 - Limited to treatment of situation for audit purposes
 - No finding if EPA directive/opinion is followed

Other Guidance

- Courts
- Executive Orders

QUESTIONS



ETHICS

- Conflict of Interest
- Personal Gain
- Disclosure of Confidential Information
- Revolving Door Law
- Notice of Representation for Fee
- Notice of Contract
- Statement of Economic Interests
- Employment by Regulated Persons/Businesses

Conflict of Interest

Code of Alabama 1975, §36-25-1(8), defines conflict of interest as “A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust.”

What is a Conflict of Interest

“A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.”

Personal Gain

§36-25-5(a) states “No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member,...or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.”

Personal Gain

§36-25-5 (c) states that “No public official or public employee shall use...equipment, facilities, time, materials, human labor, or other public property...for the private benefit or business benefit of the public official, public employee, any other person,...which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

Disclosure of Confidential Information

§36-25-8 states that “No public official, public employee, former public official or former public employee,...shall **use or disclose confidential information** gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary...”

Revolving Door Law

§36-25-13(d) states “No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business... or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business... or individual.”

Notice of Representation for Fee

Code of Alabama 1975, §36-25-10, states, “If a public official or public employee, ...**represents a client or constituent for a fee** before any...**regulatory body**,...**notice** of the representation shall be given **within 10** days after the first day of the appearance. Notice shall be filed with the commission in the manner prescribed by it...”

Notice of Contract

Code of Alabama 1975, §36-25-11, states, “Unless exempt pursuant to Alabama competitive bid laws ... no public official or public employee, ... shall enter into any contract to provide goods... unless the contract has been awarded through a process of competitive bidding ... All such contract awards shall be made as a result of original bid takings... **A copy of each contract, regardless of the amount, ... shall be filed with the commission within 10 days after the contract has been entered into.**”

Bribes and Solicitations

Code of Alabama 1975, §36-25-12, states, “No person shall offer or give to a member or employee of a governmental agency, board, or commission ... and no member or employee of a regulatory body, shall solicit or accept a thing of value ... other than in the ordinary course of business....”

Statement of Economic Interest Law

Code of Alabama 1975, §36-25-14, provides for the filing of a statement of economic interests by certain people no later than April 30 of each year covering the period of the preceding calendar year.

Who Must File

Several classifications of people must file statements of economic interest.

- Any appointed public official and public employee whose base pay is fifty thousand dollars (\$50,000) or more annually.
- Members of the Alabama Ethics Commission; **appointed members of boards and commissions** having statewide jurisdiction (but excluding members of solely advisory boards).

Who Must File

- All full-time non-merit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.
- Purchasing or procurement agents having the authority to make any purchase.
- Directors and assistant directors of state agencies.
- Chief financial and accounting directors.

What Must Be Reported

The statement of economic interest must contain the following information on the person making the filing:

- Name, residential address, business
- Name, address, and business of living spouse and dependents
- Name of living adult children
- Name of parents and siblings
- Name of living parents of spouse

What Must Be Reported

- A list of occupations to which one third or more of working time was given during previous reporting year by the public official, public employee, or his or her spouse.
- Income
- Indebtedness

Failure to File

If the information is not filed as required, the commission shall notify the person concerned...that he or she has 10 days to file the report...The commission may, in its discretion, assess a fine of ten dollars (\$10) a day, not to exceed one thousand dollars (\$1,000), for failure to file in a timely manner.

Filing Inaccurate Information

A person who **intentionally** violates any financial disclosure filing requirement of this chapter shall be subject to administrative fines imposed by the commission, or shall, upon conviction, be guilty of a Class A misdemeanor, or both.

Filing Inaccurate Information

Any person who **unintentionally** neglects to include any information relating to the financial disclosure filing requirements of this chapter shall have 90 days to file an amended statement of economic interests without penalty.

ETHICS

- Membership on Regulatory Board Prohibited
 - §36-25-9 states, “... a member or employee is prohibited from serving on a board, commission, or other body that regulates any ***business with which he is associated***”
- Exemption
 - Member of a state board or commission
 - No exemption mentioned for employees
- Definition – Business with which he is associated

Business With Which He is Associated

Code of Alabama 1975, §36-25-1(2), defines business with which he is associated as, “Any business of which the person or a member of his family is an officer, owner, partner, board of director member, **employee** or holder of more than five percent of the fair market value of the business.”

Employment of A Family Member

Ethic Commission Advisory Opinion AO 94-42

Situation: Employment of a dependent son by a consulting firm doing business with other businesses regulated by the regulatory agency employing the father.

Response: "...So long as the public employee does not use his office or position with the regulatory agency to obtain employment for the son...the offer of employment by the consultant firm to the son or the acceptance by him must not be based on any understanding that the vote, official actions, decisions or judgment of the father would be influenced..."

ETHICS

- Requirement to Report Violations
- §36-25-17(a)
- Agency Head to File Report
 - With Ethics Commission
 - Within 10 days
- Failure to report is an Ethics Law Violation

Ethics Commission Training

- The State Ethics Commission offers a full day of training on the state ethics law.
- Contact them using the information in the manual you were given today.

QUESTIONS



Frequent Noncompliance Issues

Personnel and Payroll



Go figure!

The original hire date of the employee was in 1978. She resigned in 1995, but returned in 1997. In 1999, she transferred from one board to another, retired 3 years later, and was paid for accrued leave. During an audit, the examiner found an inconsistency in the leave progression start date, which resulted in overpayment of leave balances.

Where is...

An employee advised an examiner that he routinely takes long lunches (2 hours) and is paid for a full 8 hour day, without using any leave time. Records show no leave taken during the past audit period, and it appears the employee is not working a full 8 hours.

Vacation Ahoy!

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Just a Little Extra

Two hourly employees of the board were overpaid. Both have left state service. One employee was overpaid \$123.84 for the pay period ending July 11, 2003 and \$141.26 for the pay period ending September 5, 2003. The board contacted the former employee and recovered the overpayments. The remaining former employee was overpaid \$150.93 for the pay period ending September 5, 2003. Neither we nor the board could establish contact with her, and the amount remains outstanding.

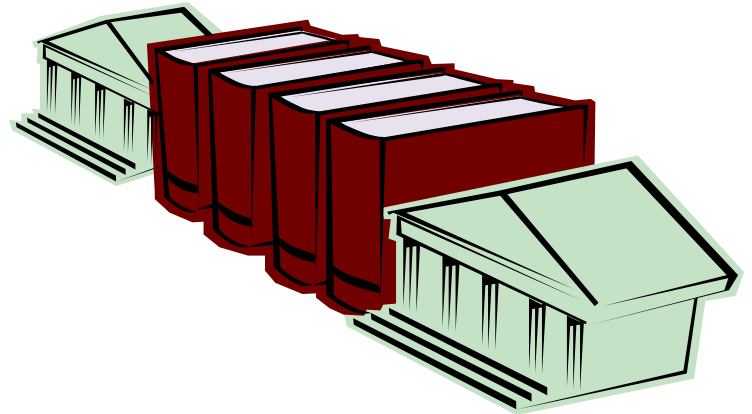
Hiring Staff

- Obtain sufficient, competent staff to meet the goals and responsibilities in enabling statutes
- Hire through legally appropriate methods



Non-merit vs. Merit System Employment

- Non-merit: must have specific authority granted in your enabling statutes
- Merit system: default hiring authority, or may be specifically stated in enabling statutes



Non-merit vs. Merit System Employment

- Non-merit: personnel are hired with or without a contract



- Merit: personnel are hired through merit system procedures

Non-merit vs. Merit System Employment

Non-merit: no definition of positions

- Independent contractors or contract employees
- “At-will” employees



Non-merit vs. Merit System Employment

Contract employees and independent contractors:

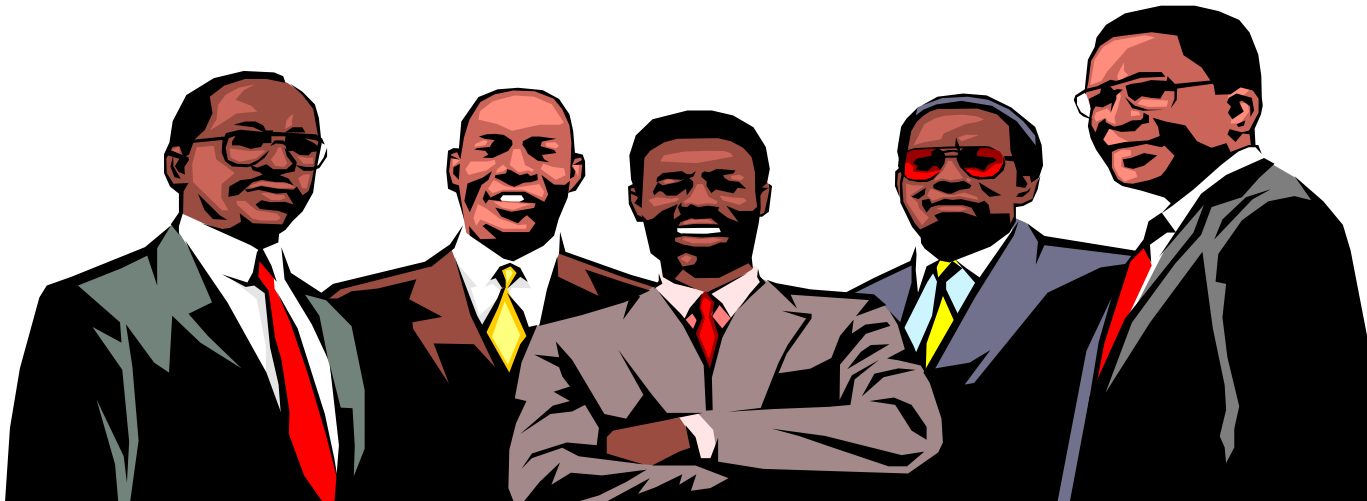
- Terms of contract define scope of benefits
- Governed by laws and rules



Non-merit vs. Merit System Employment

Types of contracts:

- Personal services contracts
- Professional services contracts



Non-merit vs. Merit System Employment

Personal Service Contracts

Code of Alabama 1975,
Section 41-16-21 (a)
exempts employment in the
regular civil service of the
state from the competitive
bid law.

Civil
Servants turn
the wheels of
Government!



Non-merit vs. Merit System Employment

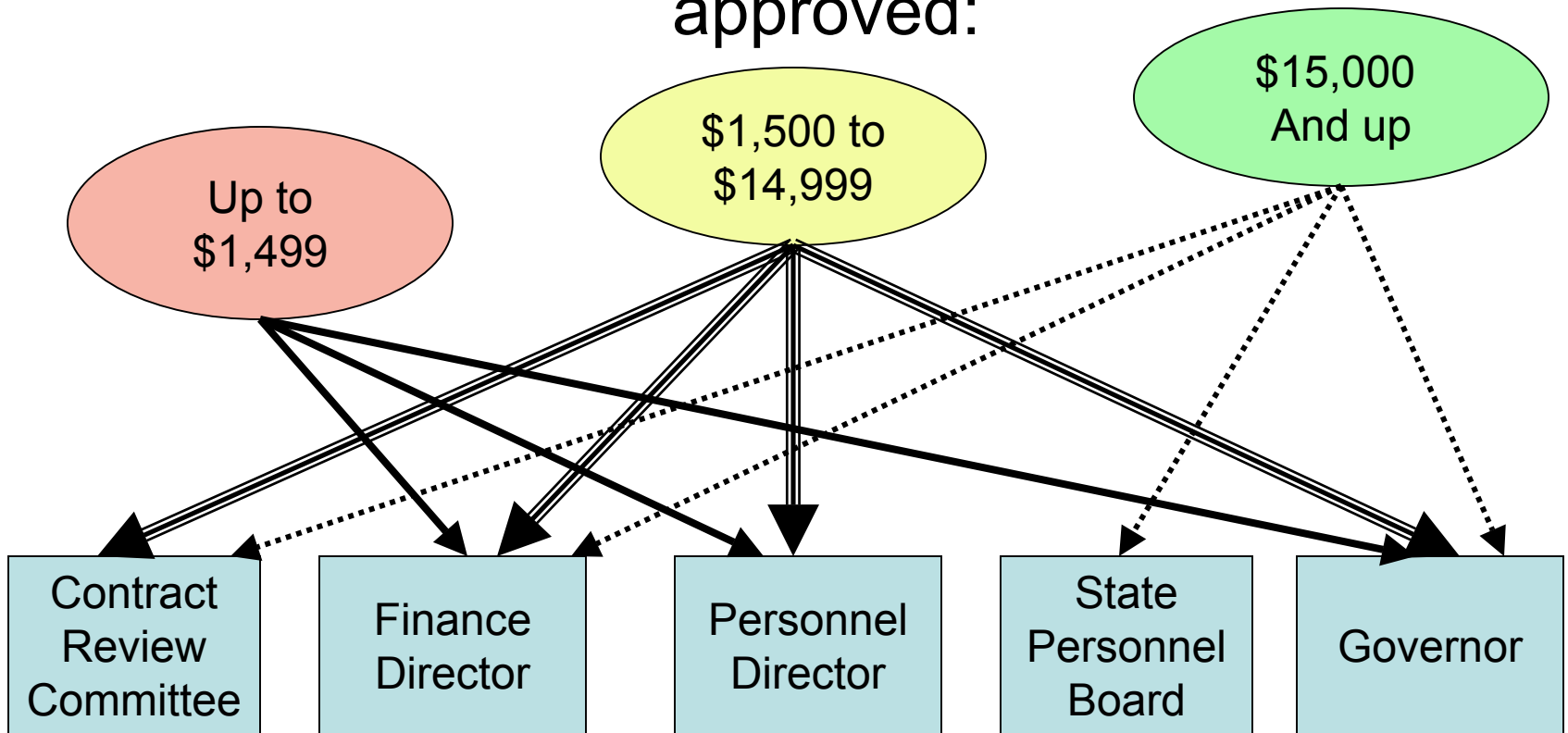
Personal Service Contracts:

Relevant guidance for writing contracts can be found in the Fiscal Policies and Procedures Manual and the State Personnel Board Procedures Manual.



Non-merit vs. Merit System Employment

Personal Service Contracts must be properly approved:



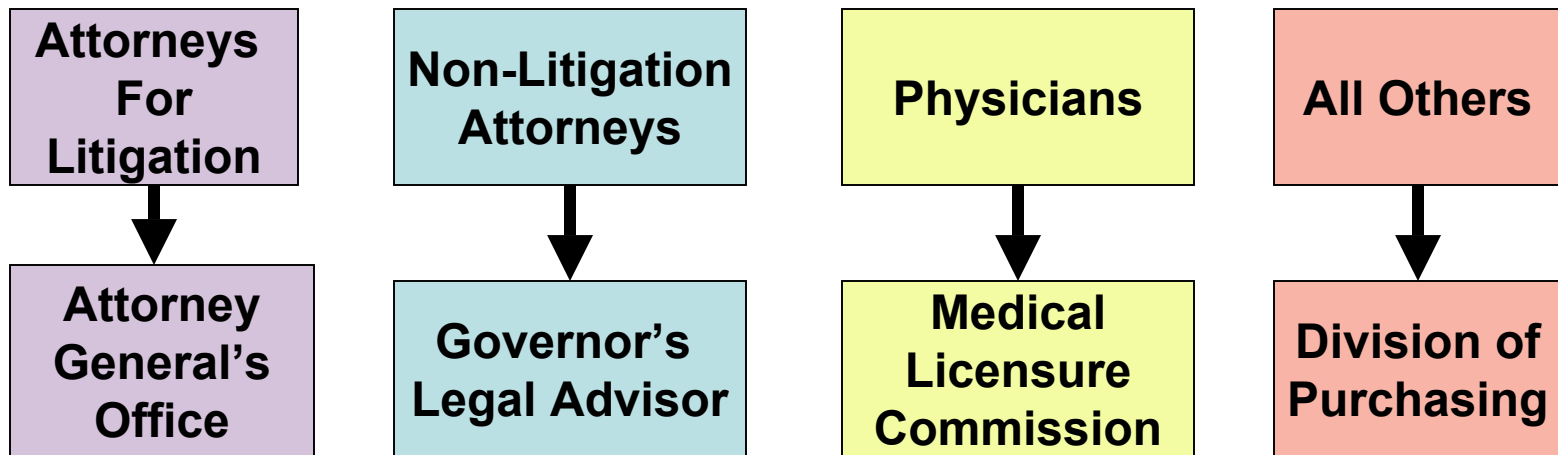
Non-merit vs. Merit System Employment

Professional Service Contracts –

- Must follow Request For Proposal (RFP) procedures!
- The RFP process was implemented in 2001 to ensure the selection of professional services through a competitive selection process.

Non-merit vs. Merit System Employment

- Step 1 – Request a list of interested parties:



YOU CAN ADD NAMES TO THE LISTS!!

Non-merit vs. Merit System Employment

- Step 2 – Prepare Specifications for Job
- Step 3 – Prepare Selection Factors and Evaluation Criteria
- Step 4 – Send Notice of Job and Specifications to All Interested Parties

Non-merit vs. Merit System Employment

- Step 5 – Receive and Evaluate Proposals Using Selection Factors and Evaluation Criteria
- Step 6 – Choose Proposal. Prepare Contract. Obtain Signatures/Approvals.

Non-merit vs. Merit System Employment

All documentation of hiring by contract, whether for personal or professional services, should be kept on file and available for audit.



Non-merit vs. Merit System Employment



Warning!

Poorly written contracts are a common pitfall and can be difficult to enforce.

Non-merit vs. Merit System Employment

“At-will” employees:

- Hired without a contract
- Receive only the compensation benefits conferred by board or commission action



Non-merit vs. Merit System Employment

Merit system: positions defined by the ***Code of Alabama 1975***, §36-26-10. In state service, merit system positions include:

- Exempt employees:
 - Not subject to the provisions of the merit system law or personnel board rules and regulations
 - Can earn leave, but only if employee was previously unclassified or classified

Non-merit vs. Merit System Employment

- Unclassified employees
 - Subject to all provisions of the merit system law and personnel board rules and regulations EXCEPT hiring and dismissal
- Classified employees
 - Fully subject to merit system law and personnel board rules and regulations

Non-merit vs. Merit System Employment



**Retired State Employees are available
for employment by state agencies!!**

Non-merit vs. Merit System Employment

- Can be hired through the Merit System:
 - As a “retired state employee”, class code 11903, or in the employee’s original classification from the re-hire list!
- Can be hired without regard to the Merit System:
 - By contract or as an “at-will” employee

Non-merit vs. Merit System Employment

Employment of Retired State Employees should comply with Retirement System policies:

- Employee should work part-time
- Employee should not earn more than \$20,000 for 2006. Check online at www.rsa.state.al.us for the annual cap.

Non-merit vs. Merit System Employment

When RSA wage
and hour caps
are exceeded:

Both employers
and employees
must contact the
RSA



Non-merit vs. Merit System Employment

- If hired through Merit System:
 - Retired State Employee (class code 11903) does not earn leave!
 - Original classification earns leave on a prorated basis!
- If hired outside the Merit System:
 - Benefits are earned as per contract.

Non-merit vs. Merit System Employment

If the employing agency is NOT participating in the Retirement Systems of Alabama, no caps are placed on retired state employees' wages or hours worked.

Non-merit vs. Merit System Employment

When hiring part-time employees you must:

- Determine the ratio of hours worked to full time hours to know what percent time the employee works.
- Set the schedule of days the hours are worked.
- Document the above in the employee's personnel file.

Non-merit vs. Merit System Employment

Part time employees:

- Earn leave in proportion to the hours they work.
- Earn longevity pay in proportion to the hours they work.
- Are entitled to take a holiday with pay if it falls on a regularly scheduled work day.
- Are not eligible for participation in state employees' insurance plan.

Non-merit vs. Merit System Employment

- Non-merit: must create personnel rules from the ground up and define benefits given to employees by board action
- Merit system: follows state personnel board policies, rules, and regulations



Employee Issues

- Agency must ensure compliance with federal and state employment laws and rules.
- Federal and state laws affect all employment whether merit or non-merit – only contract employees may not be affected.



Federal and State Laws Affecting Employment

- *Equal Pay Act of 1963*
- Title VII of the *Civil Rights Act of 1964* as amended in 1972
- *Age Discrimination in Employment Act of 1967*
- *Rehabilitation Act of 1973*, §§501 and 505
- *Americans with Disabilities Act of 1990*, Titles I and V

Federal and State Laws Affecting Employment

- *Family Medical Leave Act – 29 United States Code 2601, and 25 Code of Federal Regulations 825*
- *Fair Labor Standards Act – 29 United States Code 201*
- *Immigration Reform and Control Act of 1986*

Federal and State Laws Affecting Employment

Selective Service Act – 50 ***United States Code*** App 453 and ***Code of Alabama 1975***, §36-26-15.1, states, “No person who is required to register with the Selective Service System under the United States Military Selective Service Act (50 **USC** APP 453) shall...be offered employment by the State of Alabama without proof of such registration.”

Federal and State Laws Affecting Employment

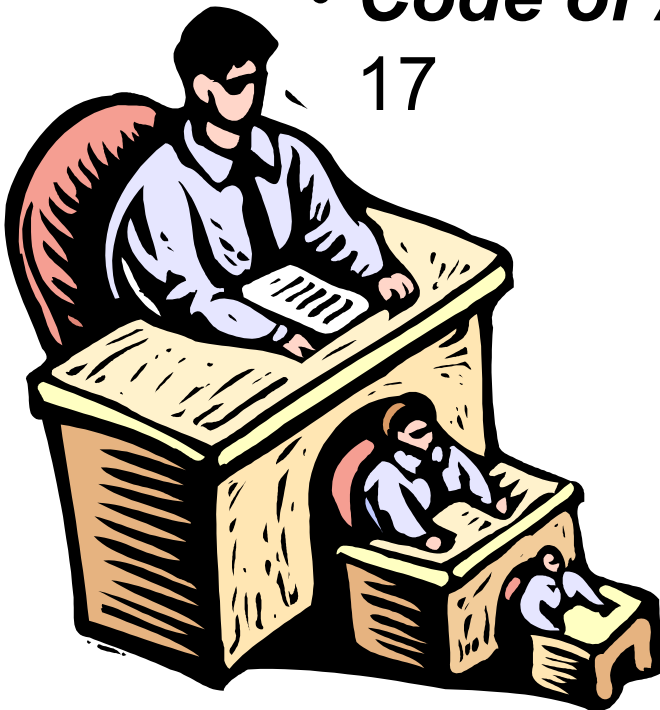
This act requires that no eligible person be enrolled in post secondary education, hired, or promoted who has not registered with the Selective Service Administration. Eligible persons are citizen and non-citizen males between the ages of 18 and 25. Registration can be verified at the Selective Service Administration's website, www.sss.gov.

Federal and State Laws Affecting Employment

New Hire Act –

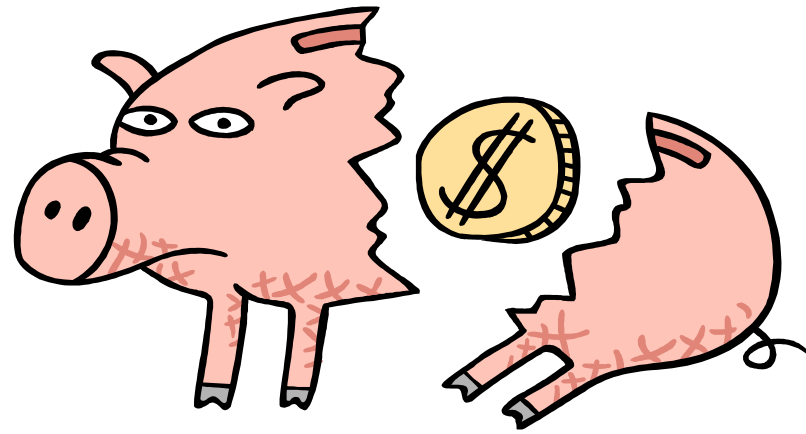
- *Federal Welfare Reform Act of 1996*
- ***Code of Alabama 1975, §25-11-1 through***

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Federal and State Laws Affecting Employment

- Payroll withholding taxes – federal and state
- Social Security
- Medicare
- Unemployment compensation
- Income tax laws



Federal and State Laws Affecting Employment

Military Leave – 38 ***United States Code***, Chapter 43,
Code of Alabama 1975, §31-12-13:

“All officers and employees of the State of Alabama...shall be entitled to military leave of absence from their respective civil duties and occupations...without loss of pay, time, efficiency rating, annual vacation, or sick leave...to be paid for no more than 168 working hours...”



Federal and State Laws Affecting Employment

Code of Alabama 1975, §36-26-31:

“Upon the application in writing of any such person...with the state director of personnel, the state personnel board shall enter...an order or memorandum granting to such applicant an indefinite leave of absence for such length of time as such applicant shall honorably serve in any of the armed forces of the United States.”

Federal and State Laws Affecting Employment

- Nepotism — the *Code of Alabama 1975*, §41-1-5



Federal and State Laws Affecting Employment

Table of Consanguinity and Affinity			
Within 4 Degrees Of Relationship			Great Grandparents
		Grand Parents	Great Uncles & Aunts
	Parents	Uncles & Aunts	
Office Holder	Brothers & Sisters	First Cousins	
Children	Nephews & Nieces		
Grand Children	Grand Nephews & Nieces		
Great Grand Children			

Federal and State Laws Affecting Employment

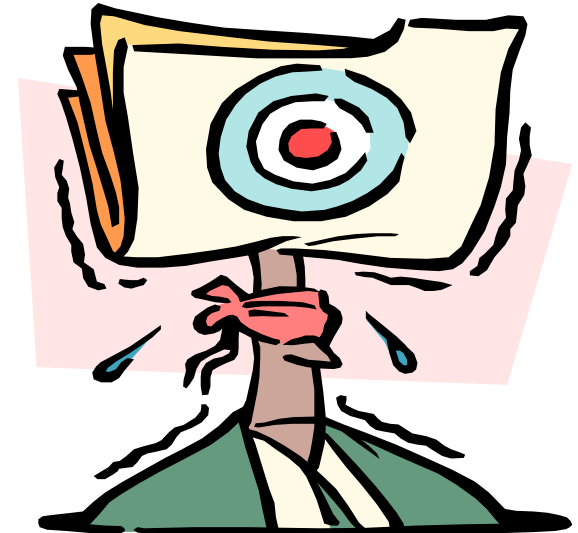
- Payment for Multiple Employment — the ***Code of Alabama 1975***, §36-6-6
- Longevity Pay — the ***Code of Alabama 1975***, §36-6-11, §36-6-12 and §36-21-3

Federal and State Laws Affecting Employment

- Retirement – ***Code of Alabama 1975***, §36-27-1 through §36-27-161
- State Employee Health Insurance – ***Code of Alabama 1975***, §36-29-1 through §36-29-30
- State Holidays – ***Code of Alabama 1975***, §1-3-8

Federal and State Laws Affecting Employment

- Controversy in the workplace
- Terminating employees



Appointing Executive Officer

Appoint through the merit system:

- Enabling statutes are silent on hiring or require hiring through the merit system
 - Executive officer must be hired through merit system procedures
 - Exempt or unclassified
 - Governor and personnel board must approve initial salary

Appointing Executive Officer

Appoint without regard to the merit system:

- Specific authority must be granted
- Executive officer position must be competitively bid
 - Treasury agencies contact the state purchasing division of the department of finance to process bid
 - Non-treasury agencies must perform all bid procedures in compliance with the competitive bid law

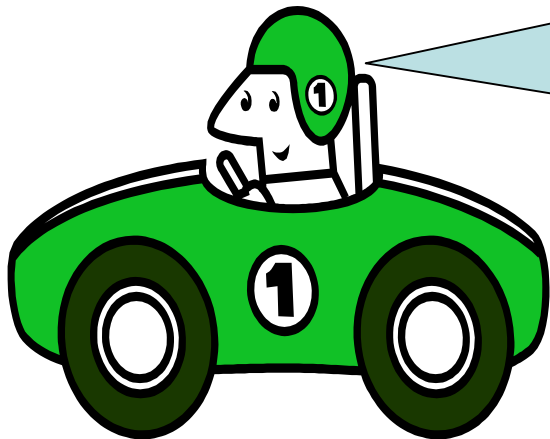
Appointing Executive Officer

When contracting for an executive officer and administrative services, care must be taken to word the contract clearly and precisely. The contract should express, in a direct manner, the level of work and financial responsibility expected from the independent contractor.



Appointing Executive Officer

When we come to audit, we will expect the board to be familiar with the terms of the contract and to be aware whether services are being provided as stated in the contract.



Competing in
NASCAR for the
board! That's a
service I'll gladly
perform!

Assignment of Duties to Executive Officer

- Managing day-to-day operations of the agency
- Preparing, implementing, and monitoring internal accounting and management controls



Acquiring Legal Counsel/Representation

The attorney general is the legal counsel for the state. The attorney general:

- Directs and controls all litigation for the state and its agencies
- Issues opinions on questions of law connected with the interests of the state or its agencies



Acquiring Legal Counsel/Representation

- Representative is assigned to provide legal counsel
- Additional counsel may be obtained
 - Fees will be negotiated and approved by the governor in consultation with the attorney general
 - Maximum fees paid for legal representation may be established by executive order of the governor

High Risk Employee Benefit!

An area where many agencies encounter non-compliance is in the calculation and payment of leave.

- The agency is responsible for verifying the leave progression start date of each employee.
- Agencies are responsible for the timely posting of earning and using leave.

High Risk Employee Benefit!

- Agencies should retain adequate leave records that document the hours taken and the authorization for the leave to be used.
- Agencies should provide a method that periodically requires employees to verify the accuracy of leave balances.

Frequent Noncompliance Issues

Personnel and Payroll



Go figure!

The original hire date of the employee was in 1978. She resigned in 1995, but returned in 1997. In 1999, she transferred from one board to another, retired 3 years later, and was paid for accrued leave. During an audit, the examiner found an inconsistency in the leave progression start date, which resulted in overpayment of leave balances.

The board's records for the employee's leave progression start date were incorrect.

- Agency should verify accuracy of recorded leave accrual start dates with all of its employees
- Leave balances to be paid at termination should be recalculated prior to payment
- It is the agency's responsibility to verify personnel information when individuals are hired or transferred

Where is...

An employee advised an examiner that he routinely takes long lunches (2 hours) and is paid for a full 8 hour day, without using any leave time. Records show no leave taken during the past audit period, and it appears the employee is not working a full 8 hours.

The board's records for annual, sick, personal, and compensatory leave balances were incorrect.

- Agency should be aware of leave type and hours taken by each employee
- Agency should adopt procedures that requires employees to periodically verify accuracy of leave balances
- Agency should record payroll matters in a timely manner

Vacation Ahoy!

The board improperly granted additional leave time to its employees in excess of leave earned by the employees under the state's merit system. Between Christmas and New Year's Day of 2001, 2002, and 2003, the board granted its employees time off from work for those days not designated as state holidays and awarded the employees additional leave time to cover the time off. The board also awarded its employees five additional leave days during 2003 in lieu of granting merit raises. Merit raises were frozen throughout state government due to budget considerations.

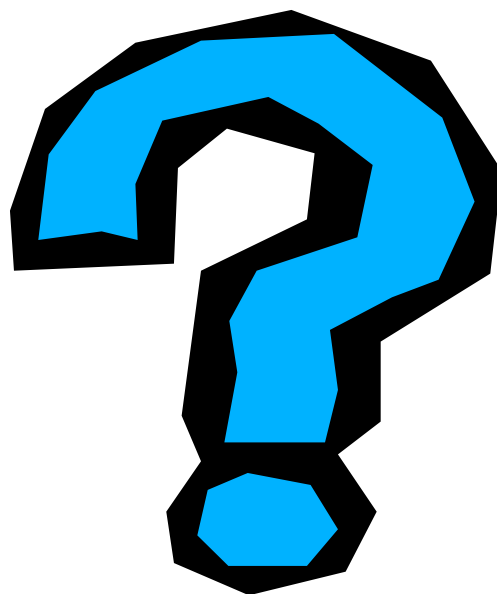
The board's employees are employed within the state's merit system. Their compensation, including leave, is specifically provided in the merit system law and the rules of the State Personnel Board. There are no provisions in the merit system for granting additional leave in lieu of merit raises or for days between Christmas and New Year's day, and the board has no authority to award leave in addition to leave earned under the provisions of the merit system. The board should not award leave to its employees in excess of leave earned under merit system law and the rules of the State Personnel Board.

Just a Little Extra

Two hourly employees of the board were overpaid. Both have left state service. One employee was overpaid \$123.84 for the pay period ending July 11, 2003 and \$141.26 for the pay period ending September 5, 2003. The board contacted the former employee and recovered the overpayments. The remaining former employee was overpaid \$150.93 for the pay period ending September 5, 2003. Neither we nor the board could establish contact with her, and the amount remains outstanding.

The board should establish additional procedures to test the accuracy of salary computations prior to payment.

QUESTIONS



Frequent Noncompliance Issues

Board and Management Issues



- The board voted officially on matters before it during executive sessions. Minutes of executive sessions were kept, in addition to minutes of open meetings.
- Meetings were held by conference call, during which votes were taken.
- The board conducted business without a quorum present.

- The minutes of the October 4, 2005 meeting of the board did not reflect the purpose of the board entering into executive session; the minutes did not reflect the votes of the individual members on the matter of entering executive session; and there was no declaration as to whether the board would reconvene after the executive session and, if so, the approximate time the board expected to reconvene.

- Minutes were not signed by the chair and/or secretary.
- The board, at a subsequent meeting, did not approve minutes.
- Minutes of board meetings indicate that board members made motions and recorded votes using fax machines. The faxed motions are later ratified at a formal board meeting.

- The department does not have a written disaster recovery plan for its information technology systems.
- The board has never developed and implemented a Records Disposition Authority approved by the State Records Commission.

- The board implemented rules without properly adopting them in accordance with the Administrative Procedure Act.
- The board charges fees not supported by statute. Only one fee is authorized.
- The board has no statutory authority to require licensees to be insured or to require continuing education for renewal of licensure.

- Improper appointment of board members to terms that expire on dates other than the normal expiration of terms has caused the terms of board members to become misaligned with the staggered scheme of board member terms provided by law.

- The commission approved the annual operating budget; however, the budget details did not always agree with the budget summary originally approved, and the amendments to the budget were not always approved in the minutes of the commission's meetings.

- Many reports and records needed for review were not maintained or provided in a manner to facilitate the review process.
- Board members are required by law to perfect their appointments by taking an oath of office in the probate office in their county of residence. The board could not provide evidence of members meeting this qualification. The board keeps no evidence that oaths have been taken.

- The board does not publish a roster of its licensees that contains the information required by law.
- The board did not have on hand the appointment letters for all members.
- The board has promulgated rules that conflict with Alabama law.

- A board member who was appointed to the board on March 23, 2001 began improperly serving on the board prior to being confirmed by the Senate.
- The board's administrative assistant implemented changes to fees levied by the board without the board's official vote to approve the changes.

- The board improperly closed its offices from Christmas through New Year's Day.
- Two board members were serving after the effective date of their resignations from the board.
- The board did not transfer the proper amounts due to the General Fund following the end of each fiscal year as required.

- The board did not submit to the Department of Finance at year-end accurate and complete financial information for all assets and accounting transactions not recorded on the State's central accounting system, as requested, for inclusion on the Comprehensive Annual Financial Report (CAFR).

Refreshing!



Board and Management Issues



Board and Management Issues

- Meetings
- Record Keeping
- Administrative Procedure Act
- Other Duties



Meetings

- By Statute or Call of Chair
- Open Meetings Law Compliance
 - Notice on Secretary Of State website
 - Informal or Formal
 - Committees and Subgroups
 - Confirmation Retention



Meetings

- Executive Session
 - When it is appropriate
 - Attendees
 - How it is held
 - Recording
 - Voting



Meetings

- Voting
 - Proxies or Designees
- Quorum
 - Majority of Members
 - Physically Present
 - Actions Invalid
 - Vacancies
- Minutes as Evidence
 - Procedural Leaflet



State Records Commission

- Responsibilities
 - Conducts surveys (§41-13-24)
 - Issues regulations (§41-13-24)
 - Determines preservation (§41-13-21)
 - Approves disposals (§41-13-21)

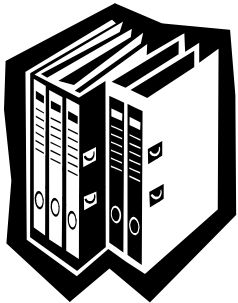
Record Keeping

- Public Records
 - The ***Code of Alabama 1975***, §36-12-40, states, “Every citizen has a right to inspect and take a copy of any public writing of this state ...”
 - There are a few exceptions
 - Attorney General’s Opinions 2002-089, 2003-048

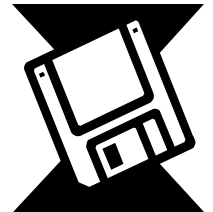


Record Keeping

- A “public writing” is a record ... reasonably necessary to record business and activities...” (Stone v. Consolidated Pub. Co., 404 So.2d 678 (Ala. 1981))
- Public Records encompass all media
- Records must be kept in office where created or in an approved depository

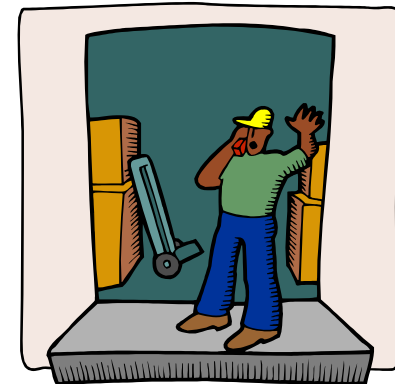


AGO 2002-042 and 064



Record Keeping

- Records Disposition Authority
 - “No state officer or agency head **shall** cause any state record to be destroyed or otherwise disposed of without first obtaining approval of the State Records Commission...” (*Code of Alabama* 1975, §41-12-21)
 - **Contact Archives and History**



Record Keeping

- Retention of Records
 - ***Code of Alabama 1975***, §41-13-21 and §41-13-23, Agency RDA
 - Annual Reporting Compliance
- E-mail Records
- Off-Site Storage and Back-Up Information



RESPONSIBILITIES

CODE OF ALABAMA

- §36-12-2 – Public officers and servants shall maintain accurate records, and keep them safe.
- §36-12-4 – All records will be passed on to the officer's successor in a timely manner.
- §36-12-5 – Records will be sent to the Department of Archives and History for retention when the records are no longer current.
- §41-5-23 – Every state and county officer shall keep records and make reports in compliance with procedures prescribed by the Chief Examiner.

PENALTIES

- Possible criminal act
 - Tampering – Class A misdemeanor
- Jail confinement
- Findings
- Loss of court case
- Negative publicity



ARCHIVES & HISTORY

- Assistance:
 - Records management
 - RDA implementation training
 - RDA implementation monitoring report
 - Transmittal of permanent records
 - Advice on off-site storage facilities
 - Technical advice and assistance



ARCHIVES & HISTORY

- Benefits:
 - Reduces use of storage space
 - Reduces cost of records maintenance
 - Provides easier access to record information
 - Reduces exposure to legal, financial, and political risks
 - Increases office work efficiency and productivity
 - Provides an adequate documentation system for decision making
 - Identifies and protects permanent and vital records
 - Ensures compliance with public record laws
 - Fosters better public service and community relations

Website: www.archives.state.al.us

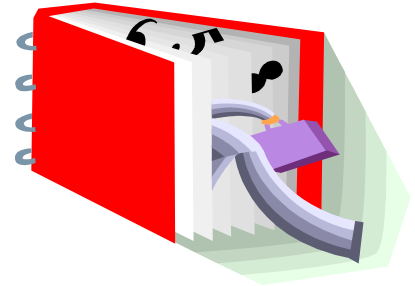
- Public Officials: Your Records Responsibilities and The Law
- Making a Case for a Records Management Program
- Guidelines for Managing E-Mail
- Legal Admissibility of Public Records
- Managing State Records in Alabama
- What Public Officials Need to Know About Records Maintained on Digital Imaging Systems
- Guidelines for Maintaining Digital Records
- Guidelines for the Preservation and Transfer of Agency Website Records

Administrative Procedure Act

- Each agency given the right to promulgate rules may do so
- Each agency has the right to define a reasonable scope and cost of public records inspection.
 - Public records may be inspected at the board's office between the hours of 9 a.m. and 5 p.m. on Mondays and Wednesdays.
 - Attorney General's Opinion 1998-161 - "A custodian of public records may recoup reasonable costs... but may not recoup the cost of attorney's fees ..."
- Internal Policies

Administrative Procedure Act

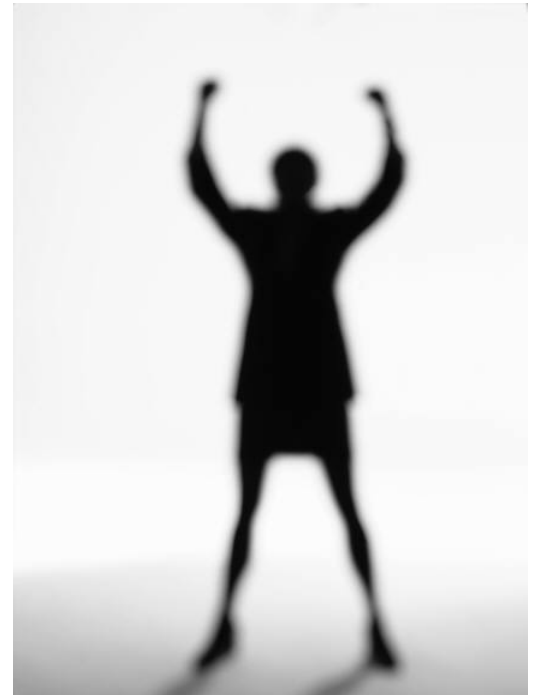
- Agency **shall** follow steps as specified in the **Code**, or its rules are not valid



- Cannot Exceed Law
 - Attorney General's Opinion 79-331 dated 03/20/1979 to Board of Cosmetology (and others)

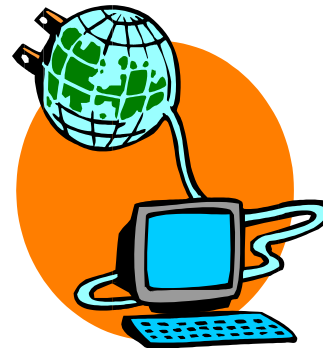
Legislative Reference Service website

- LRS posts Alabama Administrative Code
- Disclaimer: **Not official**
- Official available in hardcopy form
- Agency web-links
 - Licensees/Citizens rely on what agency provides
 - Examiners look, too!



Miscellaneous Duties

- Annual Reports
 - Alternative Distribution and Publication of Materials Supplied to Legislature
 - ***Code of Alabama 1975***, §29-1-25
- Use of Internet (internal policies)
- Website Content



Information Services Assistance

- Information Services Division (ISD)
 - Electronic Government Support
 - Network Support and Access
 - Application Development
 - Support
 - Contracts



Information Services Assistance

- Information Services Division
 - e-Communications
 - Communications
 - Server Management and Storage
 - Mainframe Storage and Operations
 - Mainframe Web Services



Miscellaneous Requirements

- Appointment letters
- Bonds of officials
- Oaths of office
- Budget approval



Miscellaneous Requirements

- Transfer balances to the General Fund
- Recycling
 - ***Code of Alabama 1975, §22-22B-3***



Miscellaneous Requirements

- Roster
- State Closings
- Secretary of State's Website
 - Agency Information



Miscellaneous Requirements

- Report of State Vehicles



- Energy Conservation Duties



Miscellaneous Requirements

- CAFR
- Internal Controls –
Attitude Of The Top



Executive Attitude

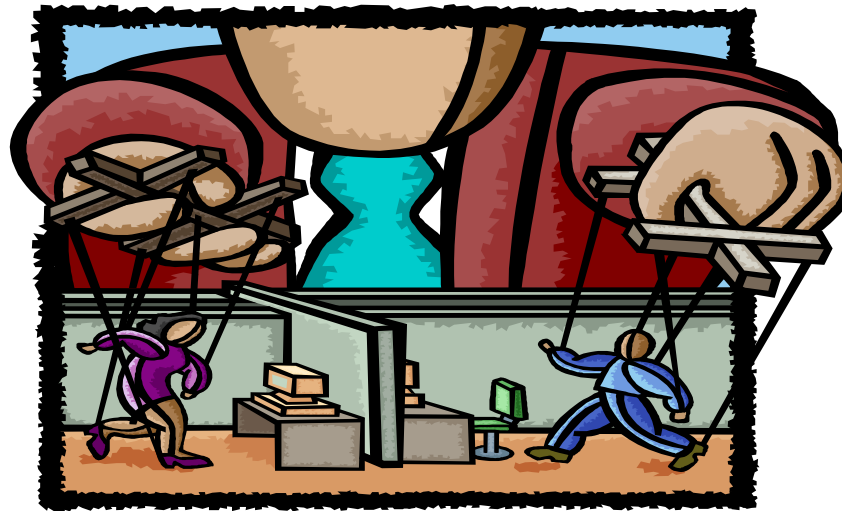


QUESTIONS



Responsibility of Management

Implementation and Monitoring of
Adequate Internal Accounting and
Management Controls



What is this Internal Control stuff we keep hearing about?

- Internal controls are something that my auditors ask me about every time they come in to do an audit.
- It's not something I need to worry about.

Internal Controls

- Accounting Controls –
\$\$\$\$\$\$\$\$\$\$\$\$
- Management Controls –
People

Internal Controls Defined

Internal Control is a process – effected by an entity's board of directors, management, and other personnel – designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- Reliability of financial reporting,
- Effectiveness and efficiency of operations, and
- Compliance with applicable laws and regulations.

In Plain English

**Internal Controls are the processes
you use to protect your assets:**

**Money, Information, Personnel,
Office Facilities, Inventory, etc.**

Five Components of Internal Control

- Control Environment
- Risk Assessment
- Control Activities
- Information and Communication
- Monitoring

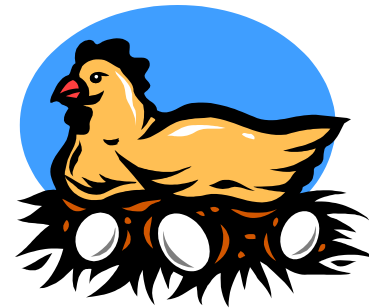
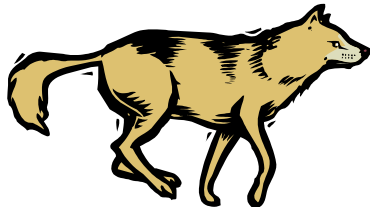
CONTROL ENVIRONMENT

It is comprised of:

- Management's integrity
- Its ethical values
- The competence of your government's personnel
- Your government's philosophy and operating style, including its attitude towards technology and financial reporting, its need to meet financial results, and its attitude toward risk-taking
- Your government's method of assigning authority and responsibility – how does and to whom does management assign authority and delegate responsibility?
- Its organization and development of its human resources

Risk Assessment

- Risk assessment is your agency's identification and evaluation of the threats to the achievement of its objectives and how it should manage those threats.



CONTROL ACTIVITIES

- The policies and procedures developed by/for your agency to ensure that its directives are carried out. They include:
 - Approvals and Authorizations
 - Review and Reconciliation
 - Segregation of Duties
 - Safeguarding of Assets

INFORMATION & COMMUNICATION

- The Identification,
- Capture, and
- Exchange of information in a form and time frame that enables employees to carry out their responsibilities.

MONITORING

The continual assessment of internal controls over time.

- Are the internal controls performing as intended?
- Do they need to be changed?

If changes are made, they must also be monitored.

IC - Generally

- Segregation of duties
- Reconciliation of bank or fund accounts
- Sub-ledger accounts should balance with general ledger

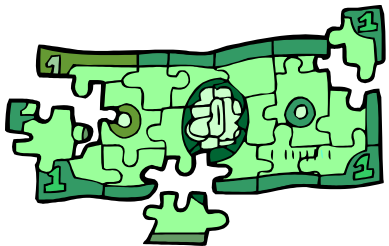
IC-Receipts

- Prompt deposit of revenues/receipts
- Restrictively endorse upon receipt
- Worthless check policies
- Detect missing funds
- Locked safe



IC-Expenditures

- Never make checks out to cash
- Never pre-sign blank checks
- Require two signatures
- Only authorized person(s) should sign vouchers/checks
- Prevent payments to ghost payees
- Prevent duplicate payments
- Detection of improper expenditures



IC – Information System

- Employee Passwords
- Supervisory Approvals/Passwords
- Screen Saver Password
- Electronic Tracking Log
- Policies (Preferably Written)



QUESTIONS



Frequent Noncompliance Issues

Licensing and Discipline



What's Missing?

In a sampling of fifteen licensee files, ten did not have proof of current liability insurance required to be submitted on both initial and renewal applications; and one was not notarized. In a sampling of three establishment's files, none had proof of required current liability insurance. The file of one school sampled did not have proof of accreditation from the Department of Postsecondary Education.

Mo' Money!

In a sample of 74 licensees who paid fees, 18 licensees paid for application packets (\$50), 4 licensees paid for late renewal of license (\$75), 8 licensees paid for change of address (\$50), one licensee paid for replacing a license (\$50), 4 licensees paid for change of person in charge (\$50). None of these fees is specifically authorized by statute.

Refund-O-Mania!

In conflict with its own administrative rule, the board refunded one licensing fee and six renewal fees during 2002 totaling \$1,400. During 2003, two renewal fees totaling \$400 were refunded. The board's rule states that, "No fee or part of fee paid by an applicant for license, or any request for which a fee is required, shall be refunded for any reason."

Licensing and Discipline

- Government exists to protect the public welfare and safety.
- Government uses occupation regulatory agencies to provide this protection.

Licensing and Discipline

Regulatory agencies accomplish this mandate through four approaches:

- verifying compliance with standards;
- licensing qualified practitioners;
- creating rules and regulations; and
- disciplining practitioners

Licensing and Discipline

All regulation must be accomplished within encompassing laws that provide and sometimes limit the agency's authority over practitioners.



Standards for Practice, Continued Competency, and Conduct

Standards for practice may include:

- attaining certain levels of general education,
- attaining levels of specialized education,
- participating in an internship program,
- verifying a base level of knowledge,
- providing referrals to determine character,
- providing evidence of financial standing,
- providing proof of general health

Standards for Practice, Continued Competency, and Conduct

Verifying continued competence of licensees is provided through continuing education as a part of the renewal of license process.



Standards for Practice, Continued Competency, and Conduct

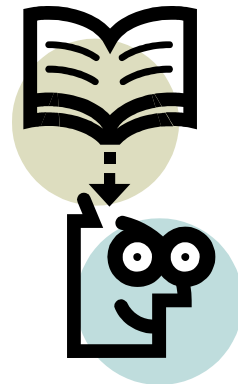
Occupation regulatory agencies may:

- record hours attained by licensees
- approve providers of continuing education
- provide the actual training

Standards for Practice, Continued Competency, and Conduct

Occupation regulatory agencies may be required to develop a Code of Professional Conduct.

- Provides a level of professional behavior.
- Used as a yardstick when evaluating licensees for discipline.



Standards for Practice, Continued Competency, and Conduct

The code of professional conduct must be developed, approved, and adopted by the agency in a manner consistent with law.

Licensing Qualified Practitioners

Licensing provides permission, by a competent authority, to perform acts which, without such permission, would be illegal, a trespass, a tort, or otherwise not allowable.



Licensing Qualified Practitioners

Licensing encompasses both:

- certification (authentication of something in writing or by attestation)
- registration (to record formally and exactly as on a list or the like)

Licensing Qualified Practitioners

Occupation Regulatory Boards must determine what documentation to require from applicants to verify compliance with the standards for practice set by lawmakers.



Licensing Qualified Practitioners

Standard for Practice

- General education
- Specialized education
- Internship program
- Basic knowledge
- Moral character
- Financial standing
- Good health

Qualifying Documentation

- Diploma or GED
- Post Grad transcript
- Program transcript
- Passing examination
- Letters of reference
- Audited statements
- Results of specific health tests

Licensing Qualified Practitioners

- A record of all qualifications met should be kept in the licensee's file for future reference.
- Unless the agency is specifically authorized to create them, only the qualifications for licensure that are set by law may be enforced.



Licensing Qualified Practitioners

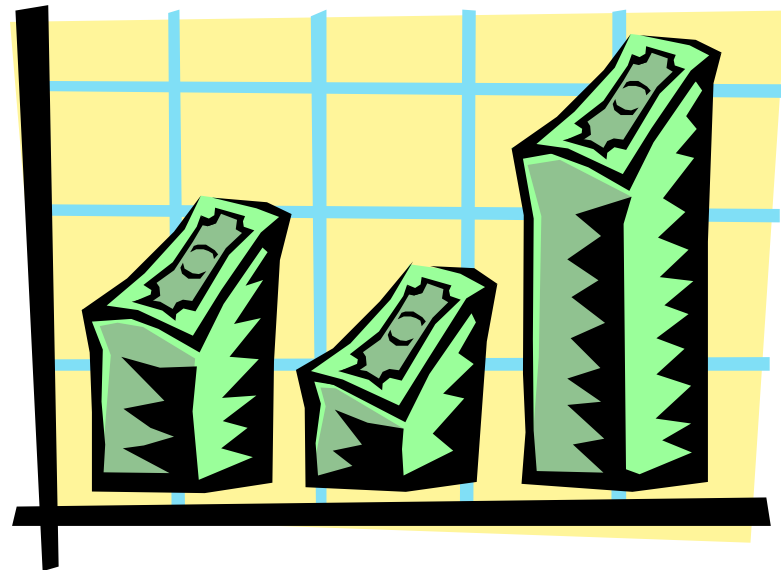
****NOTE****

Receipt of a fee is a qualification of licensure!

- The fee must be received before a license can be issued.
- Without specific authority, the fee cannot be waived, nor can it be prorated.

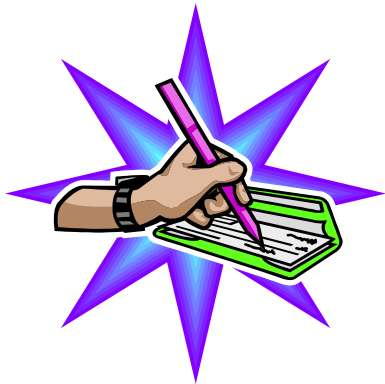
Licensing Qualified Practitioners

- The agency cannot accept less than what is mandated, but it also cannot keep more than the mandated amount.



Licensing Qualified Practitioners

- If a fee for a license is received by check and then the check is returned for insufficient funds, the license is invalid since a qualification for licensure has not been met.



Licensing Qualified Practitioners

Documentation of payment of the fee should be included in the licensee's file.

- Copy of receipt documentation, or
- Notation of reference to separate receipt file

Licensing Qualified Practitioners

ONLY FEES ESTABLISHED BY LAW CAN
BE LEGALLY COLLECTED!



Licensing Qualified Practitioners

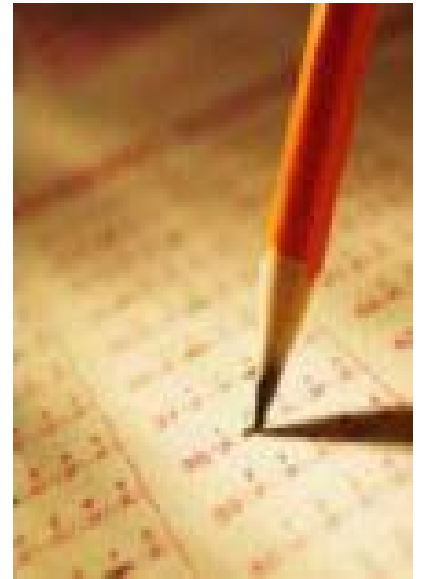
When fees are adjusted by the agency the new fee schedule must be:

- Discussed and voted on in a meeting;
- Approved and processed by Administrative Procedure Act requirements; and
- Published in the agency's administrative code.

Licensing Qualified Practitioners

When examining licensees, the agency may:

- prepare, administer, and grade its own examination for licensure, or
- contract with a national association to prepare, grade, and perhaps administer a nationally distributed exam



Licensing Qualified Practitioners

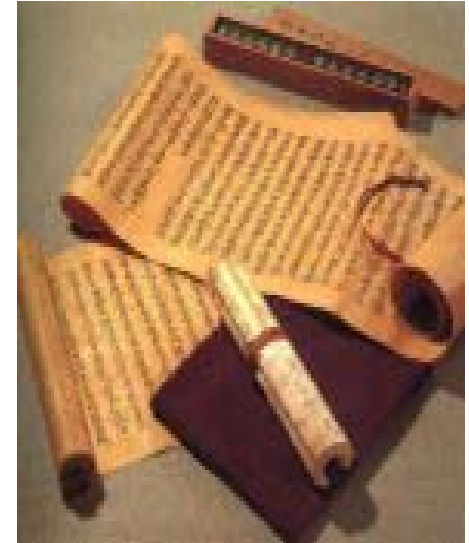
Benefits to using a national exam and/or testing service:

- Alabama candidates are tested for the same knowledge as candidates across the nation.
- Multi-state licensure is easier to accomplish.
- Exams are offered to meet the candidate's schedule.
- Agency resources are not tied up.
- The exam fee can be paid directly to the national association or the testing service if the law allows.
- The agency's liability is limited.

Licensing Qualified Practitioners

Two additional laws that affect licensing qualified practitioners:

§103 of the ***Constitution of Alabama 1901*** prohibits the adoption of any statutes that unreasonably limit competition in the market place.



Licensing Qualified Practitioners

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the **Code of Alabama 1975**, Section 30-3-194 (a):

“Any agency charged with the administration of any law concerning the issuance or renewal of a license, certificate, permit, or other authorization ...to engage in a profession, [or] occupation shall require all applicants for issuance or renewal of the license, certificate, permit, or other authorization to provide the applicant's Social Security number to the agency, which agency shall record the Social Security number on the application and related records maintained by the agency.”

Licensing Qualified Practitioners

HOWEVER:

if a licensee file is reviewed as a public record, your agency must ensure the security of personal identification information.

AG Opinion 2006-068

“With respect to personal information, such as home address, telephone number or social security numbers, the Alabama Supreme Court has held that this information may be more personal than public and may not be subject to disclosure.”



Licensing Qualified Practitioners

If authorized by statute, licensing can occur through reciprocity:

- Both states must have substantially similar qualifications for licensure.
- Both must honor the reciprocal agreement.
- Licensure will occur based on the candidate's credentials from his home state.

Licensing Qualified Practitioners

License Expiration

- Licenses have limited life set in the agency's statutes.
- Once the date set by law is past, the license expires and is no longer valid.
- Part of an agency's licensing operation should be notification to licensees that they can no longer practice their occupation when their licenses expire.
- Once a license expires, a licensee must either apply for a license as a new applicant or apply for reinstatement of the license.

Licensing Qualified Practitioners

License Renewal

- Applications received after the renewal date are considered delinquent and are eligible for a late renewal penalty, if authorized by law.
- A grace period may be established by statute. If not authorized by law, it cannot be created by rule.
- A grace period is a time period after the expiration date when the licensee can renew without having to apply for a new license or seek reinstatement.
- A grace period may extend the time for payment of the renewal fee, but it does not extend the life of the license. Any regulated work performed by the licensee during the grace period is done illegally.

Licensing Qualified Practitioners



An application for renewal must meet all of the requirements specified by law in order to be renewed. This includes obtaining the appropriate number of continuing education hours. Unless the agency has specific statutory authority to do so, continuing education hours cannot be waived.

Creating Rules and Regulations

Any decision made by the agency's board which affects how the agency interacts with its licensees or how the licensees may interact with the public must be approved and adopted by vote as a rule. The rule must be processed through the requirements of the Administrative Procedure Act before it is placed into practice. Otherwise the rule is invalid and cannot be enforced.

Creating Rules and Regulations

Occupation regulatory agencies run into trouble by enlarging upon the law through their rules to:

- Create new levels of licensure (apprentice, journeyman, master instead of **just** licensee),
- Create additional qualifications for licensure (separating an internship program into separate hour levels instead of **just** the program as a whole), or
- Create layers of fees (application fee, examination fee, credential review fee, initial license fee instead of **just** license fee).

Creating Rules and Regulations

- If the law does not authorize something, it cannot be created by rule of the agency's board.
- Rules which enlarge upon the law are unenforceable.



Disciplining Practitioners

Unlicensed practitioners
are not subject to an
agency's authority.



Disciplining Practitioners

Due process must be followed in disciplinary proceedings:

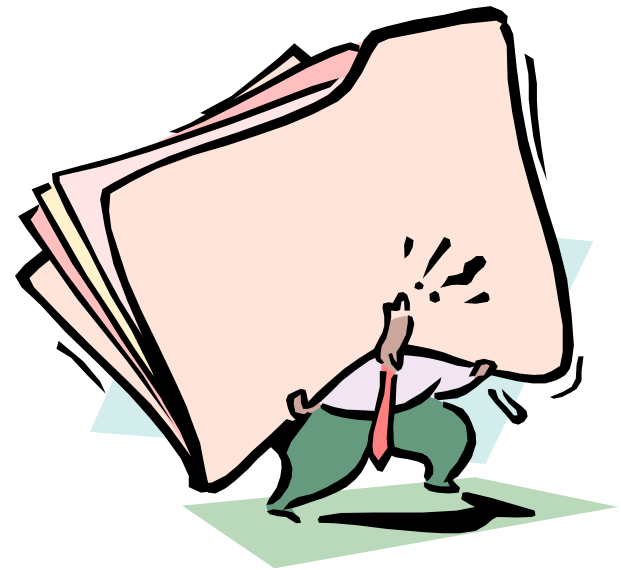
- Receipt of timely notice of a hearing and charges;
- Opportunity to confront accusers and to present evidence before an impartial jury or judge;
- Innocence presumed – guilt must be proven by legally obtained evidence;
- Verdict must be supported by the evidence presented;
- Notification of constitutional rights, protections against self-incrimination; and
- Opportunity to be represented by counsel.

Disciplining Practitioners

- Anonymous Complaints:
 - ✓ In most cases, agencies are not barred from receiving them.
 - ✓ When received, an investigation is initiated. If the investigation indicates the complaint has merit, the agency's board becomes the complainant in the case.
 - ✓ Anonymous complaints can be made for a valid reason; BUT, they can also be a vehicle for malice towards and harassment of a licensee.
 - ✓ Anonymous complaints should be carefully monitored.

Disciplining Practitioners

When a complaint is received, adequate records should be maintained which allow agency personnel to know the status of the complaint and investigation.



Disciplining Practitioners

Adequate records include:

- The date the complaint was received
- The type of complaint (in-person, letter, telephone, e-mail, etc.)
- The name and address of the person filing the complaint
- The date an acknowledgement letter was sent, if applicable
- The nature of the complaint

Disciplining Practitioners

Adequate records also include:

- The licensee the complaint is lodged against
- The date the licensee is notified of the complaint
- The progress of actions taken
- The resolution of the complaint
- The date of the resolution
- The date the complainant and licensee are notified of the complaint's resolution

Disciplining Practitioners

When hiring an investigator, be aware of

- the person's familiarity with the occupation being investigated
- the person's ability to gather, analyze, and present data



Disciplining Practitioners

If the agency's investigators have peace officer authority, those investigators must meet the minimum requirements of the Peace Officers Standards and Training Commission.



Disciplining Practitioners

Some agencies investigate complaints through an investigative committee. The committee is usually composed of an investigator, the executive director and/or a legal representative, and a board member.



Disciplining Practitioners

Because of due process, if a board member is part of the investigative process:



- Member may not be part of the hearing process except as a witness.
- Member must be aware of geographic area and conflict of interest.

Disciplining Practitioners

Each agency's statutes should contain information as to the types of hearings that may be held and the types of discipline and/or fines that can be levied against the licensee. In addition, the Administrative Procedure Act contains guidance on hearings and disciplinary actions that may be taken.



Disciplining Practitioners

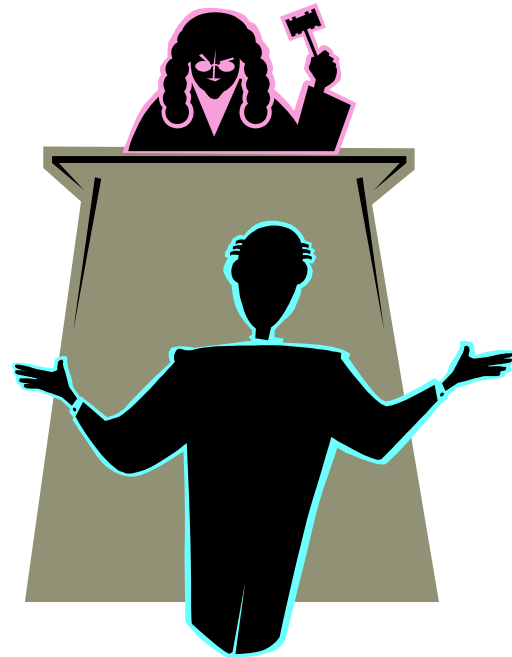
The power to subpoena documents, compel witnesses, and administer oaths is given to most regulatory agencies in their governing statutes. If such powers are not given to your agency, you may wish to employ an administrative hearing officer to preside over your hearings.

Disciplining Practitioners

- Regulatory board members can preside over and adjudicate hearings themselves; however, care must be taken to preserve due process.
- Board members who participate in the investigation process must recuse themselves from the hearing process.

Disciplining Practitioners

Disciplinary actions are authorized by the occupation regulatory board's governing statutes and by the Administrative Procedure Act.



Disciplining Practitioners

Disciplinary Procedures can include :

- letters of reprimand;
- cease and desist orders;
- required additional continuing education;
- probation status;
- administrative fines and penalties;
- denial, suspension, and revocation of license;
- negotiated settlements

Disciplining Practitioners

Administrative penalties are established in the agency's governing statutes. If an administrative penalty or fine is not established, the agency cannot charge one.



Disciplining Practitioners

If the agency's board chooses to deny, suspend, or revoke a license, due process must have been stringently applied during the hearing:

- notice must be given by certified mail to the licensee of what facts or conduct warrant the intended action, and
- the licensee must be given an opportunity to show he or she has complied with all lawful requirements for retention of the license.

Disciplining Practitioners

Negotiated settlements are provided for in the Administrative Procedure Act. Unless precluded by specific statute, informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order, or by another method agreed upon by the parties in writing.



Disciplining Practitioners

Upon notice by the Department of Human Resources or its agent, an agency is required to suspend, revoke, withdraw, or restrict the use of a license if the licensee fails to meet the requirements of the child support law.

Frequent Noncompliance Issues

Licensing and Discipline



What's Missing?

In a sampling of fifteen licensee files, ten did not have proof of current liability insurance required to be submitted on both initial and renewal applications; and one was not notarized. In a sampling of three establishment's files, none had proof of required current liability insurance.

The board improperly issued licenses.

The board should ensure that all qualifying criteria are met prior to issuing any license request and that proof of having met the criteria are documented in the records of each licensee.

Mo' Money!

In a sample of 74 licensees who paid fees, 18 licensees paid for application packets (\$50), 4 licensees paid for late renewal of license (\$75), 8 licensees paid for change of address (\$50), one licensee paid for replacing a license (\$50), 4 licensees paid for change of person in charge (\$50). None of these fees are specifically authorized by statute.

The board charged unauthorized fees.

The board should charge only those fees specifically authorized by statute. Various opinions of the Attorney General state that fees not specifically authorized by statute cannot be charged.



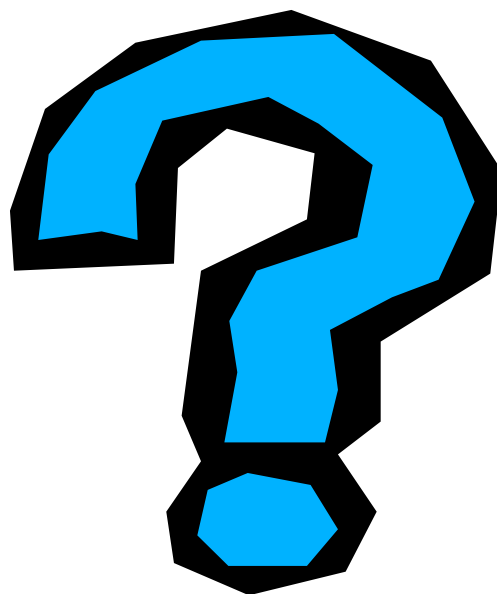
Refund-O-Mania!

In conflict with its own administrative rule, the board refunded one licensing fee and six renewal fees during 2002 totaling \$1,400. During 2003, two renewal fees totaling \$400 were refunded. The board's rule states that, "No fee or part of fee paid by an applicant for license, or any request for which a fee is required, shall be refunded for any reason."

The board acted contrary to law.

The board should not refund any fee received, except amounts received in excess of fees it is entitled by law to collect. The board does not have the discretion to refund fees for any reason until the rule is amended.

QUESTIONS



Frequent Noncompliance Issues

Financial and Other Matters



Actual Findings

- The examination revealed that the treasurer endorsed numerous checks. These checks were made payable to the treasurer, Cash, or as a two-party check that included the treasurer and a vendor.

- The previous examination found that the board paid sales tax on several purchases. During the current examination, two invoices were found totaling \$32.95 on which sales tax was paid.
- Documents creating financial transactions were signed as approved by persons not properly authorized to sign approval of the documents.
- The board did not submit two contracts to the Permanent Legislative Contract Review Oversight Committee.

- The board paid fees for the services of two attorneys, an investigator, and an Internet website designer without adhering to the procurement and reporting processes required by law.
- Records of disbursements maintained in the office were not complete.
- Payments made to a contractor exceeded the total amount of the contract.

- Orders for license renewal forms were placed in FY 2002 and FY 2003. Each year the forms were ordered directly from vendors in two \$489 batches days apart from each other.
- Disbursements are approved by the board's staff rather than by the board's chairman.
- The board paid an invoice in which two line items showed the same description but each with a different price, thus creating an incorrect invoice total.

- Records of nonconsumable personal property maintained by the office did not match property records maintained by the Property Inventory Control Division.
- A sample of current deposits revealed lag times are ranging from 41 to 121 days from receipt to deposit.
- The board failed to comply with the state's bid law on two occasions.

- When two property managers relinquished their duties, the board did not withhold their last salary payments pending a complete, approved check of the property inventory by the State Auditor's Property Inventory Control Division.
- An examination of written receipts for personal property for which responsibility rests with someone other than the property manager indicates property, described as a picture with frame of a former commissioner having a value of \$420.00, was receipted to a member of the family of the former commissioner who was not employed in state service.

- Incorrect equipment serial numbers had been reported to the Auditors' Office. A serial number for a laptop computer was reported that belongs only to the computer's replaceable battery. The battery has since been replaced, with the result that no identifying control number remained on the computer. A facsimile machine's equipment number was submitted instead of its serial number. A laser printer's serial number was incorrectly submitted.

- Delivery charges were not added to the total cost of two equipment items.
- The board's property was not insured, despite the existence of a state program of insurance for state agency property.
- In a sample of equipment purchases by the department, there were two items of equipment costing more than \$500.00 that had been placed in use without being assigned property control numbers or placed on the property inventory.

- The previous examination revealed that the board improperly disposed of six items of state equipment. The current examination revealed that a former board member maintained custody of and discarded a laptop computer deemed unusable. In addition, the current board members advised three former board members to keep three laptop computers purchased with board funds.

- The board receives numerous receipts, but receipts are not reconciled to deposits, a condition that unnecessarily increases the risk of loss or misuse of state funds without detection.
- Some daily cash record sheets were changed and balanced by reducing amounts for copies if collections were short in comparison with daily receipts.

- Examination of undeposited receipts on hand revealed that checks were not being restrictively endorsed when received.
- In our audit sample of payments for out-of-state travel expenses, we found three occasions where claims for reimbursement of meal costs were paid without the proper documentation provided by the traveler.
- On three occasions, board members submitted claims totaling \$217.31 for meals that were furnished by the conference they were attending and paid for through registration fees.

- Unallowable travel expenses were claimed for alcoholic beverage purchases, hotel spa charges, and for meals that were included in the meeting registrations.
- Payments for in-state mileage and per diem were at rates different from those specified by law.
- Seven claims for reimbursement of travel expenses were paid to a board member for overnight travel to a destination of less than 100 miles one-way without proper documentation of board approval.

- A board member traveling out-of-state received an unallowable reimbursement for \$1,740.34 for an additional hotel room for his family.
- The board paid out-of-state travel claims submitted by the administrative assistant and board members without a signed prior authorization for the travel obtained from the governor.
- Four board members and one employee submitted claims for reimbursement of out-of-state travel expenses that included the cost of a meal computed by dividing the total shown on the restaurant receipt by three.

- A former contract employee was paid a monthly travel allowance of \$500 from January 1998 through August 31, 2000 for a total of \$16,500. The contract authorized the provision of an automobile; however, there was no mention in the contract of a monthly travel allowance.
- Disbursements made in excess of appropriations are deemed to exceed the board's legal authority for expenditures.

- The capital lease-purchase payments were expensed as paid, and the equipment was not added to the General Fixed Assets Account Group until after the final payment was made.
- In a sample of 164 disbursements, eight were coded to incorrect accounts.

- The board continued to pay a local vendor for copier rentals after the contract expired in April 2003 without re-bidding the contract.
- An independent contractor performed part-time data entry services for the board under a personal services contract with the board. However, the contract was not submitted to the State Personnel Department or to the Governor for approval.

- Payments were made from invoice copies, statement account summaries, and handwritten internal notes causing duplication of payments. Payments were routinely made late and penalties were often incurred.
- Purchases were made for flowers, alcoholic beverages, gifts, Christmas parties, and personal items. Charitable contributions were also made and amounts were paid for health/fitness club dues for relatives of some employees.

- Board policy stipulates that cellular phone usage is for business purposes only. Cell phones were provided for the bookkeeper and three others. Phone usage to and from places with no ascertainable business purpose were identified.
- Reimbursements were made to employees for the cost of storage space for training equipment. Some reimbursements were made to more than one employee for costs covering the same period of time.

- Disbursements were made to employees for travel expenses without the benefit of a proper travel form and, when available, the documentation did not reflect times of travel, destination, or traveler's signature.
- Clothing was purchased from a private clothing store whose president was employed as the board's bookkeeper. The bookkeeper was responsible for purchasing, receiving, and remitting payment for clothing. During the examination period, available documentation indicates payments of at least \$136,000 to the private clothing store.

- Vehicles were not identified on receipts for gas purchases, vehicle repairs, and parts. The mileage was not notated on the receipt either.
- Actual meal costs were paid when per diem/meal units were also paid. Disbursements were made for employee meals at base. Incorrect rates for travel were also used.

- Checks were written to cash for more than \$12,000 during the examination period. Some of these checks were supported by receipts submitted for purchases made prior to the check date with no indication of who made the purchases; some were not supported by invoices/receipts; and receipts for purchases made after the date of the check supported others. The checks were signed by the bookkeeper and the director and endorsed by the bookkeeper. Those checks written to cash, which were not supported by invoices/receipts, were charged to the bookkeeper for repayment.
- Federal regulations require entities to file form 1099-MISC for each person that has been paid at least \$600 in rents, services, other income payments, or medical and health care payments.

- In a review of all credit card purchases during the examination period, it was noted that the commission purchased \$230.98 of alcoholic beverages from a store maintained by the ABC Board in Gulf Shores, Alabama.
- The examination revealed several purchases of office supplies and equipment from the same vendor over very short intervals, and occasionally, within minutes of each other.

- For personal reasons, two employees scheduled for out-of-state travel on prepaid flights cancelled their flights and exchanged their tickets for later flights. The department was charged \$100 per ticket for the cost of the rescheduling.
- There were twenty-eight (28) instances noted where two employees did not file their respective travel expense reports as required by commission policy. The twenty-eight instances ranged from twelve to 554 days after the required filing time. As a result approximately \$16,000 of expenditures were reported in the incorrect fiscal year. State policy prohibits payments of expenses that are not reported and filed in the proper fiscal year.

- The employee was based in Dothan and working in the Birmingham area. Over the 3½ month period of 10/12/99 through 1/31/2000, this individual claimed and was paid for overnight in-state travel for all holidays, as well as days during which the employee was on leave. This involves four holidays, one personal leave day, two days of leave, and two of his regular days off after his base was changed. The employee was allowed by his supervisor to claim all of these days. Also during the 3½ month period, the employee was paid overnight per diem for all weekends, as well.

- On two occasions, one board member traveled to conferences by private automobile rather than by commercial air. He was reimbursed for private automobile mileage in the amounts of \$1,863.00 and \$1,098.65, respectively. The other board members, who traveled by commercial air, were reimbursed an average of \$340.00 and \$317.00, respectively.
- In some instances, equipment disposition forms were completed and authorization was obtained for disposal of computers included in our test; however, several of the computers shown as scrapped were physically located and were still in service.

- During our testing, there were 17 items that were lost, destroyed, or sold by accident during fiscal year 2000 and 2001.
- The property manager duplicated three items with a value of \$3,600 when posting voucher and purchase order numbers.
- The board did not include a leased automobile in its state property inventory records.

- An inventory of property was not done prior to termination of an outgoing property manager, as required by law. State property in the custody of the agency not currently in use was not always stored in a secure area, resulting in an unresolved loss. A computer that was scheduled for disposal was not processed for disposal and was missing during a November 18, 2004 inventory performed by a newly-assigned property manager. The computer had been stored in an unpartitioned, open basement storage area that was also used by other agencies.

- While attempting to physically locate a sample of state equipment selected from the department's property inventory records, we noted seven items that were not at the locations identified on the records. A resulting review of receipts for custody of equipment revealed that equipment had been moved from its recorded location without the knowledge of the person who had signed a receipt for custody of the equipment. In addition, a custodian did not sign one receipt transferring custody of equipment. The receipt included a listing of equipment with a recorded cost of \$263,331.99.

- Leave was posted to the State's human resources accounting system months after employees used leave, resulting in incorrect recorded balances of leave for six employees. Of the six employees, recorded leave balances were reduced for five to reflect actual use of leave. One employee was allowed to use leave in excess of the total of leave earned during her employment and was also paid incorrectly at termination for a balance of unused leave she had not earned.

- Many travel claims did not reflect the actual signature of the person filing the claim.
- Members of the board and its staff improperly claimed and were paid travel allowances for meals that were provided to the members at a conference. In addition, a board employee claimed a dinner meal allowance for a day on which her travel status ended at 3:00 PM, when she returned to her base.

- Of eleven fines ordered by the board that were selected as a sample, our preliminary testing indicated that two (2) were not collected, three (3) appeared to have been collected at less than the full amount, and one (1) appeared to have been collected for double the amount ordered.
- Undeposited receipts were placed in an unsealed pouch on top of a small filing cabinet.
- The same employee who prepared checks for deposit and deposited the checks also had complete custody and control of returned checks.

- An employee was assigned a department-owned vehicle and a telephone calling card. He was instructed to leave the department vehicle parked at the parking deck when he was not working. However, the employee drove the vehicle to his home in Birmingham and to his parents' home in Lowndes County on numerous occasions at night and during weekends. Gas tickets we examined showed that he used the vehicle for personal reasons at night and on weekends. Also, this employee filed several travel claims showing that he traveled overnight to certain locations, such as Mobile. According to telephone records, he did not travel to those locations overnight, but stayed overnight at the home of his parents in Lowndes County.

- According to Operational Policy some of the duties of the bookkeeper were to: maintain duplicate record systems of all transactions; provide the director a written weekly total of all money flows; process all fund flows; and maintain checks/cash for purchases. The secretary's duties included maintaining all files and being able to locate all files of the bookkeeper. An adequate system of internal accounting control should include the preparation of receipts for all moneys collected and timely deposit of cash receipts. Because of a lack of necessary procedural controls or the failure to follow prescribed procedures, deficiencies were noted in the following areas of cash: (next 2 slides)

- Monthly bank reconciliations between book balance and bank balance were not available.
- For the majority of the examination period records were not available to determine that receipts were properly deposited. Although the dates of actual receipt could not be definitively ascertained, it was noted that numerous checks were deposited up to one month after the date of the check. Only 25 deposits were made to the operating bank account during the 3-year period of 10/1/96 through 9/30/99. During this same period, there were only 2 deposits made which contained cash. Six documented cash collections for sales in the amount of \$430.60 were noted. A cash deposit of \$658 was made on 2/11/99; however, only \$136 of the \$430.60 was collected prior to 2/11/99. After 2/99, there was no cash deposited until 10/2002.

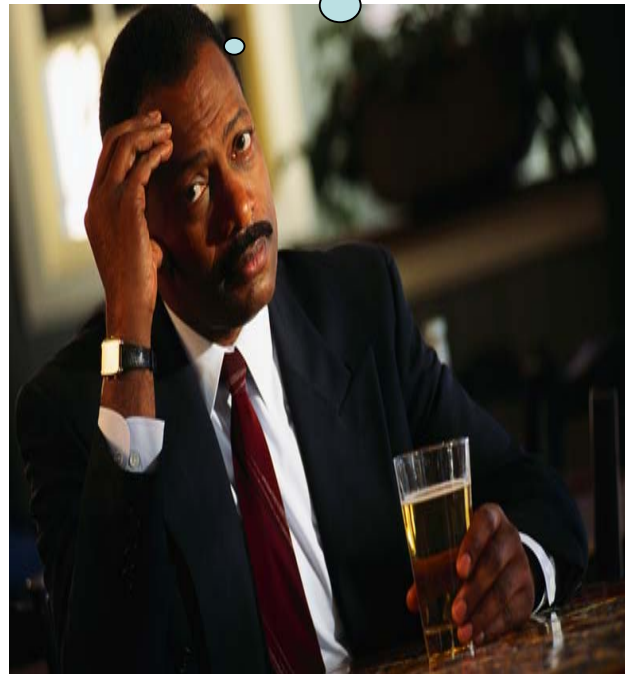
- During the examination period the bank account was charged more than \$1,600 for returned checks, plus \$43 in bank fees. There was no documentation to substantiate that these returned checks and fees were properly collected and re-deposited.
- Blank checks bearing the director's signature were found in a desk drawer and file cabinet.
- One of two bank accounts was closed on 10/3/2001; however, the cash from the closed account was not deposited into the operating bank account until 6/11/2002, over eight months later.

Relax and Enjoy



Agency Operations

- Appropriations
- Budgets
- Cash
- Receipts
- Expenditures
- Payroll
- Property



Is it break
time yet?

Agency Operations and Finances

- Appropriation Authority
 - Requires Legislative Action
 - The ***Alabama Constitution of 1901***, Article IV, Section 72, states “no money shall be paid out of the treasury except upon appropriations made by law, and on warrant (state check) drawn by the proper officer in pursuance thereof;...”
 - Checking account agencies are exempt from appropriation requirements

Agency Operations and Finances

- Year-End Balance/Encumbrances
- Treasury Funds/Checking Account
 - The ***Code of Alabama 1975***, §41-4-92 states, “All fees, receipts and income collected or received by any department, board, bureau, commission, agency or office or institution of the state shall be paid into the state treasury or deposited in an approved state depository.”
 - Unless authorized by statute, all funds must be deposited into treasury accounts.

Budgeting

- Budget Management Act
 - ***Code of Alabama 1975***, §41-19-1 through §41-19-12
 - Executive Budget Office (EBO)
 - Estimate of Expenditures
 - Actual Agency Revenues
 - Estimate of Revenues
 - Performance Statement
 - Personnel Classification Budget
 - The EBO supplies forms and instructions for the preparation of the budget. **NOTE:** All agencies are required to file a budget.

SMART Budgeting

Specific, Measurable, Accountable, Responsive, Transparent

- Submission of SMART budgeting documents
- Review goals and objectives
- Review indicators
- Review performance reports
- Test for validity and accuracy

Cash

Petty Cash

- Must be specified in law, or not allowed
- Keep documents supporting receipts and expenditures
- Should reconcile on a regular basis



Near Cash & SAFE



- Investments
 - ***Constitution of Alabama 1901***, Amendment No. 450
- Collateralization and Security for Alabama Funds Enhancement Program (SAFE) §41-14A-3(2)
 - Funds deposited and held in accounts outside of the State Treasury must be sufficiently protected, or collateralized, with securities provided by the depository.
 - <http://www.fdic.gov> and www.treasury.state.al.us

Collecting and Handling Receipts

- All Funds Are State Funds
- Payment of Fee as Part of Qualifications
- Bad Check Fee
 - The ***Code of Alabama 1975***, §8-8-15 allows agencies to assess a fee for checks returned for non-payment due to insufficient funds, etc. Maximum allowed is \$30. Read the ***Code*** to find out more.
- Credit Card Receipts
 - ***Code of Alabama 1975***, §41-1-60. Read the ***Code*** to find out more.

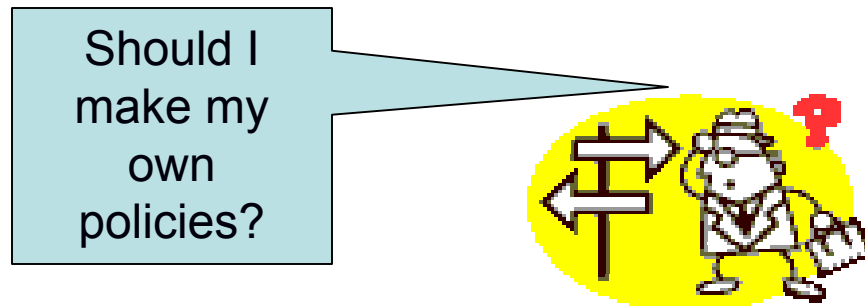
Reasonable Costs

- Public entity may recoup reasonable costs incurred in providing public documents, including staff research, preparation, and time, but not costs for an attorney's time reviewing potentially confidential documents. Attorney General's Opinion 81-538



Expenditure of Funds

- Laws Governing Expenditures
 - Finance Department Rules and Regulations
 - Checking account agencies should adopt policies for expenditures, or by resolution adopt the Fiscal Policies and Procedures of the Finance Department.



Statutory Requirements

- All agencies must comply
 - §41-4-54
 - §4-4-113
 - §41-4-55
 - §41-4-90
 - §36-7-20 through 24 ; §41-4-57
 - §41-16-20, 21, 50
 - §40-12-222; §40-23-4(11); the
Constitution of Alabama 1901

Division of Purchasing

- Provides for purchasing of all personal properties and services **except:**
 - Highway Construction Projects
 - Building Construction Projects
 - Alcoholic Beverages
 - Professional Services (RFPs)

Purchasing

- Payment for Goods and Services
 - Purchases up to and including \$500
 - Purchases from \$500.01 to and including \$7,499.00 (cannot break order into smaller units to circumvent this requirement)
 - Purchases in excess of \$7,499.00 require compliance with Bid Law (ditto)
- Lease of Office Space

Contracts

- Statutory Requirements
 - Governor's Approval of Contracts
 - Governor's Executive Order, August 28, 1957; Attorney General's Opinion, June 9, 1948, to McFarland
 - Review by the Legislative Contract Review Oversight Committee
 - ***Code of Alabama 1975***, §29-2-41
 - All contracts are considered new, and will be treated by the committee as such.

Disclosure Requirements

Act 2001-955 requires a disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000. The disclosure statement is not required for contracts for utility services where no competition exists, or where rates are fixed by law or ordinance.

Contracts

- Bid Law
 - Competitive Bid Law §41-16-1 through 125
- Contracts for which Competitive Bidding Required
 - ***Code of Alabama 1975***, §41-16-20
 - Fiscal Policies and Procedures Manual, Chapters 4 and 5

Contracts - Professional Services

- Contracts for which competitive bidding **NOT** required
- Act 2001-956 modified the ***Code of Alabama 1975***, §41-16-21 and §41-16-70 through §41-16-79. Some relevant parts of the act are as follows:
 - Attorneys
 - Physicians
 - Professionals

Requests for Proposals

- Defined in ***Code of Alabama 1975***, §41-16-71 and 72
- To be used in Alabama for Professional Services **ONLY**
 - §41-16-72(5) requires that only the Professional Service may be purchased by RFP – all others subject to §41-16-20
- To be conducted by each State Agency

Requests for Proposals

- Must request a list of registered suppliers from Purchasing
 - Sole source does not require RFP but does require approval by the Purchasing Director
 - Emergency contract may be declared for 60 days and must notify the Governor and Attorney General

Request for Proposals

- The RFP should contain all the Terms and Conditions as are necessary for that Agency
- *And* a scope of work containing a complete definition of the problem to be solved

Requests for Proposals

The **Code** says “*..shall select the professional service provider that best meets the needs...*” and “*...price shall be taken into consideration.*”



Requests for Proposals

- Develop a business contract between the State Agency and the selected provider
- Contracts go before the Legislative Contract Review Oversight Committee
- All awards arising from RFPs are subject to ***Code of Alabama 1975***, §29-2-40 through §29-2-43

Travel for Staff and Witnesses

In-State Travel

- 6 Hours or less
- 6 to 12 Hours
- More than 12 hours, not overnight
- Overnight
- No per diem
- \$11.25 meal allowance
- One meal allowance & $\frac{1}{4}$ per diem (\$11.25 + \$18.75 = \$30)
- \$75 per day

IN-STATE TRAVEL

- Montgomery to Birmingham and back from 8 A.M. to 3 P.M. (7) hours would be \$11.25.
- Montgomery to Huntsville and back from 8 A.M. to 9 P.M. (13) hours would be \$30.00.
- Mobile to Birmingham for a meeting leaving at 8 A.M. on Monday and returning anytime Tuesday would be \$150.00.

IN-STATE TRAVEL

Mileage is reimbursable at the federal rate. As of January 1, 2006, this amount is 44.5 cents per mile and is payable for any mileage traveled. Mileage is paid for the shorter distance between your base or home (whichever is less) and your destination. (***Code of Alabama 1975***, §36-7-22 and Attorney General's Opinion 80-144 and 81-345)

Base or Home?

- Your official base is Selma. Your residence is in Prattville.
 - Scenario 1: You will be attending a conference in Birmingham. The mileage allowance is from Prattville to Birmingham.
 - Scenario 2: You will be attending a training session in Mobile. The mileage allowance is from Selma to Mobile.

State Motor Pool

- Montgomery-based employees must use
- Some exemptions are allowed



In-State Travel

- How to Claim Payment
 - Complete form FRMS-6 Statement of Official In-State Travel, indicating dates, departure and destination, distance, and hours of travel and certain miscellaneous expenses (parking fees, emergency vehicle repairs, etc.) Include receipts for any miscellaneous expenses, and give the signed and notarized form to your agency's accounting staff to be submitted to the state comptroller for payment.
 - Forms can be obtained from the Comptroller's Website at www.comptroller.state.al.us. Select on-line forms.

In-State Travel-Conventions

- In-State Convention attendance



Out-of-State Travel

- §36-7-21 – Approvals
- Conference itinerary
- Reimbursement of actual and necessary expenditures
 - Itemized receipts for meals, travel, tips, parking, hotels, faxes, etc.



Out-of-State Travel

- How to Claim Payment

Complete form FRMS-6A Statement of Official Out-Of-State Payment. Attach the Governor's approval; airline tickets (indicating traveler and amount); registrations; motel/hotel receipts; daily meals receipts; any parking fees; taxi fare; etc. Be sure to make copies for your own records. Submit the signed and notarized form with the supporting documents to your agency's accounting staff for processing.

Out-of-State Travel

- Memo from the State Comptroller dated 12/29/2005
- Meals - \$39 per day without receipts
- Over \$39, must provide receipts
 - Name and location of restaurant
 - Number of people served
 - What was purchased
 - Date and amount of the meal

General Travel

- Disallowed Items
 - Alcoholic Beverages
 - Meals included with registration
 - Meals and Lodging for Others
 - Charges for Executive Suites
 - Excessive Tips
 - Movies

COMPENSATION for BOARD MEETINGS & BUSINESS

- Per diem
 - Same as State employees
- Additional Payment
 - Set by Code



We are
equally
reimbursed!

Payroll Issues

- GHRS
- Checking Accounting Agencies
 - Income tax withholdings
 - Timely submission of withholdings
 - Overtime vs. Comp time
 - 1099s vs. W2s
 - Commuting use of state vehicle



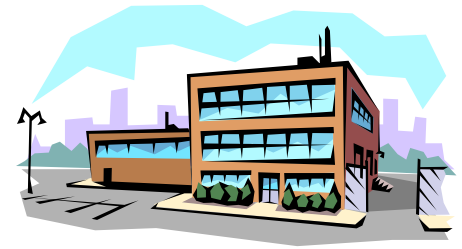
Law Enforcement Officers

- Defined
 - ***Code of Alabama*** §36-21-6
- Subsistence Pay
 - ***Code of Alabama*** §36-21-2
- Gun & Badge
 - ***Code of Alabama*** §36-21-8

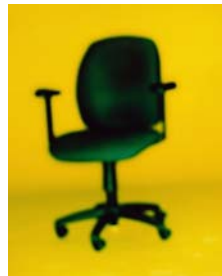




PROPERTY



- Classifications of Property
 - Real Property
 - Land and Buildings
 - Non-consumable Personal Property
 - Equipment, Furniture, Fixtures



Property

- Accountability Requirements
 - Property Managers are responsible for all property, no matter the value
- Reporting Requirements
 - Conservation Department – Lands Division
 - Finance Office – Capital Management Plan
 - Property Inventory Control Division

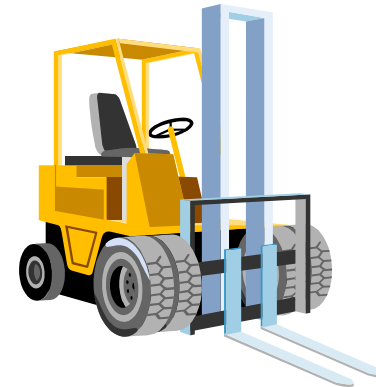
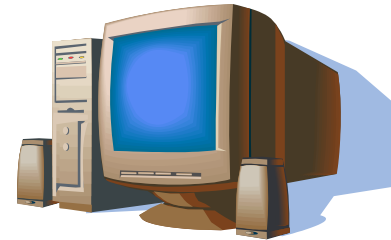


PROPERTY

- State Auditor's Office – Property Inventory Control Division; *Code of Alabama 1975*, §36-16-7 through §36-16-11
- Periodic 100% Inventory of Property showing
 - The complete description of the property item
 - Manufacturer's serial number
 - Cost price of the item
 - Date of purchase
 - Physical location of the item (building, county, etc.)
 - Which agency has possession of the property
 - The person responsible for the property, and
 - State property number

MANDATED CONTROLS

- Appointment of Property Manager
- Property Inventory Reports
- Completion of Hand Receipts
- Disposal of Surplus Property



Mandated Controls

- PROTÉGÉ
 - Attorney General's Opinion 2003-180 - The State Auditor may require state agencies to use an electronic inventory control system established or specified by the State Auditor.
- Termination of Property Manager
 - Inventory required and hold the pay check



Property Insurance

- Division of Risk Management
 - Certify by June 30
 - Changes
 - Claims



Risk Management

- Website
 - General Liability Trust Fund
 - Employee Injury
 - Automobile Insurance
 - Policy Management
 - Loss Control
 - Employee Assistance Program
 - Equipment Maintenance Program

Why all the fuss?



Fraud occurs somewhere every day. Don't let it happen to you.

For a portion of the period being examined, deposits of funds were delayed, cash receipts were improperly diverted, documentation was falsified, altered, or lost and other discrepancies occurred in receipts processing. This condition was the result of the actions of one employee. The audit revealed that the employee was assigned duties that, when coupled with insufficient supervision, allowed the employee to both perpetrate and conceal fraudulent activity.

The board's staff has an improper separation of duties.

- Duties should be assigned and supervised in a manner that will not allow an employee to both perpetrate and conceal fraudulent activity.



Management has insufficient control.

- Codification of Statements on Auditing Standards, Section 643.34
 - Management should provide a strong internal control structure.





QUESTIONS?

